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KING et al. v. JOHNSON et al.

Jan. 12, 1915.

[83 S. E. 1070.]

1. Wills (§ 608*)—Estates Created—"Rule in Shelley's Case."—The rule in Shelley's Case, applicable to devises, was that whenever an ancestor by will took an estate of freehold in lands or tenements, and by the same will an estate was afterwards limited by way of remainder, either mediately or immediately, to his heirs, or heirs of his body, the words "heirs" or "heirs of the body" were words of limitation, carrying the inheritance to the ancestor, and not words of purchase creating a contingent remainder in the heirs.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1372-1378; Dec. Dig. § 608.* 12 Va.-W. Va. Enc. Dig. 294.

For other definitions, see Words and Phrases, First and Second Series, Rule in Shelley's Case.]

2. Wills (§ 608*)—Construction—Estates Created—Rule in Shelley's Case—"Heirs."—Testator's will, dated in 1845 prior to the act abolishing the rule in Shelley's Case (Code 1904, § 2423), gave land to his son for his natural life, "and should he die with a lawful heir, to his heir or heirs forever. But should he die without issue," then to another. Held that, though the word "heirs" is sometimes used, especially in wills, to describe children, or some particular class of heirs, in the absence of anything plainly showing a contrary intent, it must be deemed to have been used with its technical meaning as including the whole line of the son's heirs in indefinite succession, so that the son took a fee under the rule in Shelley's Case.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1372-1378; Dec. Dig. § 608.* 7 Va.-W. Va. Enc. Dig. 62; 14 Va.-W. Va. Enc. Dig. 506; 15 Va.-W. Va. Enc. Dig. 458.

For other definitions, see Words and Phrases, First and Second Series, Heirs.]

3. Wills (§ 607*)—Construction—Estates Created—Fee Tail—Conversion into Fee Simple.—If the devise be construed as one to the son for life and then to the heirs of his body, it creates a fee tail which by the express provisions of Act Oct. 7, 1776 (Code 1904, § 2421), is converted into a fee simple.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1368-1371; Dec. Dig. § 607.* 13 Va.-W. Va. Enc. Dig. 834.]

4. Wills (§ 457*)—Construction—Presumption—Use of Words in Technical Sense.—In the construction of all written instruments, technical words are presumed to be used in their technical sense, unless the contrary plainly appears.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 975; Dec.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Dig. § 457.* 13 Va.-W. Va. Enc. Dig. 795; 15 Va.-W. Va. Enc. Dig. 1079.]

Appeal from Circuit Court, Westmoreland County.

Suit by Thomas R. King and others against B. R. Johnson and others. Decree for defendants, and plaintiffs appeal. Affirmed.

The statute of October, 1776, declared that, when created, estates tail should be converted into estates in fee simple, full and absolute.

A. T. Embrey and *Wm. W. Butzner*, both of Fredericksburg, for appellants.

J. W. Chinn, Jr., of Warsaw, and *C. Harding Walker*, of Heathsville, for appellees.

VIRGINIA RY. & POWER CO. *v.* GODSEY.

Jan. 12, 1915.

[83 S. E. 1072.]

1. Carriers (§ 317*)—Injuries to Passengers—Evidence.—Rules of a carrier, not known to a passenger, are not admissible in an action for personal injuries as a basis for a claim of negligence.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1295, 1297-1305; Dec. Dig. § 317.* 2 Va.-W. Va. Enc. Dig. 725.]

2. Evidence (§ 589*)—Weight and Sufficiency—Testimony of Party.—Where a passenger testified to the manner in which she was thrown from the steps of a car, she was bound by her statements.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2438; Dec. Dig. § 589.* 2 Va.-W. Va. Enc. Dig. 725.]

3. Carriers (§ 305*)—Carriage of Passengers—Negligence.—Where plaintiff was on the step of defendant's car when it was started, and could have remained there in safety, had not her hold been broken by two men who pushed past her, the act of the men was an intervening cause, and the carrier, if negligent, was not liable for injuries plaintiff received in fall from the car.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1132, 1136-1139, 1245-1246; Dec. Dig. § 305.* 2 Va.-W. Va. Enc. Dig. 700; 14 Va.-W. Va. Enc. Dig. 195; 15 Va.-W. Va. Enc. Dig. 159.]

Error to Hustings Court of City of Richmond.

Action by Mrs. L. O. Godsey against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

H. W. Anderson, *A. B. Guigon*, and *Thos. P. Bryan*, all of Richmond, for plaintiff in error.

John A. Lamb, of Richmond, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.